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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,181	12/21/2001	Harry Prince	524902000200	2823

25225 7590 06/09/2003  
**MORRISON & FOERSTER LLP**  
3811 VALLEY CENTRE DRIVE  
SUITE 500  
SAN DIEGO, CA 92130-2332

EXAMINER
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DUFFY, PATRICIA ANN

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 06/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>10/028,181</b>	Applicant(s) <b>Prince</b>	
	Examiner <b>Patricia A. Duffy</b>	Art Unit <b>1645</b>	
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
<b>Period for Reply</b> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>one</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <p>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</p> <p>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</p> <p>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</p> <p>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</p> <p>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<b>Status</b> <p>1) <input type="checkbox"/> Responsive to communication(s) filed on _____</p> <p>2a) <input type="checkbox"/> This action is <b>FINAL</b>.      2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>			
<b>Disposition of Claims</b> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-46</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claims <u>1-46</u> are subject to restriction and/or election requirement.</p>			
<b>Application Papers</b> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>			
<b>Priority under 35 U.S.C. §§ 119 and 120</b> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <p>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p> <p>a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>			
<b>Attachment(s)</b> <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p> <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____</p>			

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to method of producing a fungal antigen, classified in class 436, subclass 174.
  - II. Claim 16, drawn to fungal antigen per se, classified in class 530, subclass 350.
  - III. Claims 17 and 38-42, drawn to devices comprising the fungal antigens, classified in class 435, subclass 287.2.
  - IV. Claims 18-27, drawn to method for detecting of antibodies using fungal antigens, classified in class 435, subclass 7.31.

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  - V. Claims 28-30 and 33, drawn to methods of production of an antibody, classified in class 436, subclass 547.
  - VI. Claims 31, 32, 34, and 35, drawn to antibodies that bind fungal antigens, classified in class 530, subclass 387.1.
  - VII. Claims 36 and 37, drawn to method for detecting fungal antigen in a sample, classified in class 436, subclass 518.

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VIII. Claims 43-46, drawn to device comprising antibodies, classified in class 435, subclass 287.2.

2. Inventions (II or III) and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the fungal antigen could be used in a materially different method of use such as a method of making antibodies or in a vaccine for immunization. In the instant case the device comprising the fungal antigens can be used in a materially different method of use such as in the immunoaffinity-purification-of-antibodies-from-a-solution. Inasmuch as, the products can be used in materially different methods of use, the products and methods are distinct as claimed.

3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the oxidized fungal antigens could be produced by a

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materially different process such as using the antigens purified by isoelectric focusing or ionexchange chromatography.

4. Inventions (VI or VIII) and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the fungal antibody could be used in a materially different method of use such as a method of passive immunization or in a method of localizing infection in vivo. In the instant case the device comprising the fungal antibodies can be used in a materially different method of use such as in the immunoaffinity purification of fungal antigens from a solution. Inasmuch as, the products can be used in materially different methods of use, the products and methods are distinct as claimed.

5. Inventions V and VI are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the oxidized fungal antibodies could be produced by a

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materially different process such as phage display or by produced using the oxidized antigens purified by isoelectric focusing or ionexchange chromatography.

6. Inventions IV and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the device comprising the fungal antigen could be used for isolation and purification of antibodies.

7. Inventions VIII and VII are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the device comprising the fungal antibody could be used for isolation and purification of the antigen from a sample.

8. Inventions (II or III) and (VI or VIII) are related as products. The products are distinct each from the other because they are made by different methods, are isolated from different organisms and have different biochemical functions and different chemical compositions. As such, the products are distinct as claimed.

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9. Inventions I, IV, V and VIII are related as methods. The methods are distinct as claimed because they rely on mutually exclusive and distinct products as set forth above. Further, the methods are distinct as claimed because they require non-overlapping method steps. As such, the methods using distinct products are distinct as claimed.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, as shown by their different classification, and in the absence of restriction would place an undue search and examination burden on the examiner, restriction for examination purposes as indicated is proper.

11. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

12. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

13. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A. Duffy, Ph.D. whose telephone number is (703) 305-7555. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

Patricia A. Duffy, Ph.D.  
June 8, 2003

*Patricia A. Duffy*  
Patricia A. Duffy, Ph.D.  
Primary Examiner  
Group 1600